



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 685

IN THE MATTER
OF
JAMES BARNES

DISPOSITION AGREEMENT

The State Ethics Commission and James Barnes enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On March 12, 2003, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Barnes. The Commission has concluded its inquiry and, on May 21, 2003, found reasonable cause to believe that Barnes violated G.L. c. 268A.

The Commission and Barnes now agree to the following findings of fact and conclusions of law:

FACTS

1. Barnes is a private citizen who lives in Dorchester and performs painting and plastering work. In or about 2002, he decided to get licensed to perform deleading work.

2. To obtain a deleading license, applicants first have to take a preparatory course, which lasts about a week and costs about \$500. Thereafter, applicants have to pass the U.S. Environmental Protection Agency Third-Party Lead Exam ("the EPA exam") with a score of at least 70%. Examinees are given three chances to pass the EPA exam before they have to retake the preparatory course at their own expense.

3. In fall 2002, Barnes took the deleading preparatory course. There he met David Rivera. Barnes and Rivera became study partners and decided to take the EPA exam together.

4. In Massachusetts, the state Division of Occupational Safety ("the DOS") administers the EPA exam.

5. On December 4, 2002 at about 10:30 a.m., Rivera and Barnes arrived together at the DOS office in Westborough to take the EPA exam. DOS Field

Supervisor Brian Wong set up Rivera and Barnes at individual computer stations to take the exam. Rivera and Barnes were the only ones who took the exam at that time.

6. Rivera finished his exam first at about 2:00 p.m. Wong scored the exam and found that Rivera had not scored 70%. Rivera asked if he could take the exam again, and Wong set him up at the computer station to do so.

7. Barnes finished his exam about 2:30. He, too, received a score of less than 70%, so Wong set him up to take the exam again.

8. At about 3:45 p.m., Rivera finished his second exam with a score of 66%. Because Rivera's score was close to passing, Wong offered to review Rivera's incorrect responses by hand, to see if Rivera should have gotten credit for them as correct responses.

9. Wong routinely reviewed incorrect responses by hand when the scores were between 65% and 69%. Wong did this because the regulations had changed in 2000, but the exam had not been revised. Thus, the computer might score an answer as incorrect when in fact, under the revised regulations, the answer should have been marked correct. In reviewing the responses by hand, Wong would print out the questions and answers from the computer disk, note which questions had been answered incorrectly, and see whether any of those answers related to outdated questions. If so, Wong would call the examinee and give him or her a chance to provide the correct answer to the question. This process would take Wong a significant amount of time.

10. In response to Wong's offer, Rivera wanted to thank him in some way. Wong refused, stating that his offer to review was normal procedure and part of his job when scores were this close to passing. He would inform Rivera of the result of his review at a later date.

11. At about 4:00 p.m., Barnes finished his second exam with a score of 65%. As he had done with Rivera, Wong offered to review Barnes' incorrect answers by hand and let him know the result at a later date.

12. Wong made copies of Rivera's and Barnes' test scores for them to take with them.

13. While Wong stepped away from his counter to use the copy machine, Barnes reached over the counter and placed \$100 in cash on a shelf located immediately beneath the counter where Wong was working. Barnes gave the money to Wong to thank him for his kindness in offering to review the incorrect answers by hand, and to ensure that Wong would follow through on his offer.

14. Rivera and Barnes then left the building together.

15. At about 4:30, Wong discovered the \$100 in cash on the shelf. Wong knew immediately that either Rivera or Barnes had left the money for him. Wong reported the incident and turned the money over to his superiors.

VIOLATIONS

16. General Laws chapter 268A, § 3(a) prohibits anyone, otherwise than as provided by law for the proper discharge of official duty, from directly or indirectly giving anything of substantial value to any public employee for or because of any official act performed or to be performed by such employee.

17. As a DOS field supervisor, Wong was a public employee.

18. Wong's review by hand of the incorrect exam answers was an official act.

19. Barnes' gave Wong \$100 in cash by leaving it on the shelf for Wong to find.

20. The \$100 was an item of substantial value.

21. Barnes left \$100 for Wong for or because of the official act that Wong would perform as a DOS field supervisor concerning the EPA exam.

22. By leaving \$100 as a thank you and to ensure that Wong would review the incorrect answers by hand, Barnes gave something of substantial value to a public employee for or because of an official act to be performed by that employee. Therefore, Barnes violated G.L. c. 268A, § 3(a).

Resolution

In view of the foregoing violations of G.L. c. 268A by Barnes, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Barnes:

(1) that Barnes pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, § 3(a); and

(2) that Barnes waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

STATE ETHICS COMMISSION

By:

//ss// 10/1/03
Peter Sturges Date

//ss// 9/12/03
James Barnes Date

I, James Barnes, have personally read the above Disposition Agreement. I understand that it is a public document and that by signing it, I will have agreed to all of the terms and conditions therein including payment of \$2,000 to the State Ethics Commission.

<u>//ss//</u>	<u>9/12/03</u>
James Barnes	Date